1947.

File No. Indus Disputes II/47

Legal DEPARTMENT.

B BRANCH

Subject:—

Rules and Notifications under the Bombay Industrial Disputes Act, 1938.

File No. Indus Disputes II/47
Std. Sectt. Slip 24 B e.

188-15

C O N T E N T S.

Legal Department File No. Indus Disp Tea 12/47.

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V.J./5-5
S.T.

Office of the R.L.A.

I think the definitions of "employer" in section 3(11) and of "industry" in section 3(16) of the Bombay Industrial Disputes Act, 1938, are wide enough to enable the Government of Bombay to apply the Act to the Business (confer section 3(16)(a)) carried on by the Municipal Corporation.

2. A revised draft notification is sent herewith.

Sd/- D.V.Vyas.
Remembrancer of Legal Affairs.

D.R. to P. and S.D., No. 1412, dated the 11th February 1947.

R.V.G./8-5
4 C.

POLITICAL AND SERVICES DEPARTMENT.

Bombay Castle, February 1947.

No. :- In exercise of the powers conferred by sub-section (3) of section 2 of the Bombay Industrial Disputes Act, 1938 (Bom. XXV of 1938), the Government of Bombay is pleased to direct that all the provisions of the said Act shall apply to the business of the Municipal Corporation of the City of Bombay, with effect from the date of this notification.

Bombay Industrial Disputes Act, 1938.

By order of the Governor of Bombay,

Deputy Secretary to Government.

C.V.C./9-5
4 C.

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Political and Service Department,

Bombay Castle, February 1947.

NOTIFICATION.

The Bombay Industrial Disputes Act, 1938.

In exercise of the powers conferred by subsection (3) of section 2 of the Bombay Industrial Disputes Act, 1938 (Bom. XXV of 1938) and in supersession of Government Notification in the Political and services Department, No. 396/46-I, dated the 26th September 1946, the Government of Bombay is pleased to direct that all the provisions of the said Act shall apply to the business of banking companies registered under any of the enactments relating to companies for the time being in force in any part of His Majesty's dominions or elsewhere or incorporated by an Act of Parliament or by an Indian Law or by Royal Charter or by Letters Patent.

By order of the Governor of Bombay.

Sd/-

Chief Secretary to Government.

Office of the R.L.A.

The requisite draft notification is sent herewith.

Sd/- D.V.Vyas.
Remembrancer of Legal Affairs.

L.R. to P. & S.D. No. 1888, dated the 25th February 1947.

K.V.G./965
4 C.

The attention of the P & S.D. is invited to P. & R. Department U.R. to G.D. No.R-158-VI dated 2-6-1937 forwarded to all Departments along with endorsement No. R.158-VI dated 2nd June 1937, in whic it was held that where the expression in a statutory provision is "Provincial Government", as in the present case, there is no objection to use the expression "Government of Bombay" in the body of a notification or order iss ed under such provision. The Political & Services Department should go through the papers underlying the said view and consider whether that view requires re-consideration in the light of the High Court Judgment in Misc. No.162 of 1946 or should be acquiesced in, on account of the Federal Court Ruling reported in the Times of India dated 15th April 1947 on page 4. In this connection, it may also be noted that all orders, notifications and rules which are made by the Provincial Government are expressed to be made by the Government of Bombay and if the view of Justice Bhagwati in Misc. No. 162 of 1946 was to prevail, all the said orders, notifications and rules hitherto issued would be deemed to be invalid. We might await the receipt of the official report of the Federal Court's Judgment which has been sent for; and them if necessary, the Advocate General, Bombay, may be consulted in the matter.

Sd/- P.M.Lad

Remembrancer of Legal Affairs

K.V.G./9-5

4 C.

U.R. to P.& S.D.,No. 4320 dated the 29th April, 1947.

The questions for the consideration of the R.L.A. are (1) whether section 7 of the Industrial Disputes Act, 1947, (XIV of 1947) contemplates a permanent Tribunal;

(2) whether a Tribunal may consist of one member only;

(3) whether, where it consists of more than one member; all the members must be pres nt at the proceedin s.

2. Question (1) Section 7(1) of the Industrial Disputes Act, 1947, no doubt provides that the appropriate Government may constitute one or more Industrial Tribunals for the adjudication of industrial disputes in accordance with the provisions of the said Act. But this provision does not authorize the setting up of an ad hoc Tribunal confined to any particular dispute; it only permits the appointment of more than one Tribunal, depending upon the extent of business.

The words "may as occasion arises by notification in the official Gazette constitute" which appear in sections 5(1) and 6(1) of the Act do not occur in section 7 and lend support to the above view (of the provision of section 24 of the Bombay Industrial Disputes Act, 1938 (Bom. XXV of 1938) since repealed).

3. Question(2):- Sub-section (2) of section 8 of the Act in clear words contemplates that a Tribunal may consist of o one person only. The expression "such number of members " occuring in section 7(2) does not exclude the possibility of there being only one member.

4. Question (3):- Sub.section(4) of section 5 and s subsection (3) of section 6 read with section 38(2)(a) of the Act empower the appropriate Government to make rules providing for the powers and procedure of Boards, Courts and Tribunals including the number of members necessary to form a quorum. There is no provision in respect of quorum in section 7 of the Act (which provides for the constitution of Tribunals) on the lines of the provisions referred to above nor does section 7 expressly

provide that thetribunal "may act notwithstanding the a absence of any member of the Tribunal or any vacancy therein". In the absence of such a specific provision, all the members of such a Tribunal should be present for the purpose of adjudication. Since section 7 does n not provide for a quorum unlike sections 5 and 6, no rule in respect of quorum for the purposes of proceed ings of a Tribunal can be made under section 38. That explains why no quorum has been prescribed for a Tribunal under the draft rules published in the Gazett of India, extraordinary, dated the 3rd April, 1947.

5. The draft rule 12 of the Industrial Disputes (Central) Rules, 1947, published in the Gazette of India, however, provides that a Tribunal may, with the consent of the parties, act notwithstanding any casual vacancy in its number. In any case, even if a specific profision to that effect is made in the Bombay Rules, (the validity of which is of doubtful nature) it would not cover a case w where there is novacancy in a Tribunal as such but a member is absent. In such a contingency the proceedings will have to be postponed to a date on which all the members can convently attend.

Sd/- D.V.Vyas.

Remembrancer of Legal Affairs.

U.R. to P. & S.D. No. 5937 dated the 6th June 1947.

K.V.G.

10-6

4 C.

Office of the R.L.A.

The question raised in this file is concluded by the Judgment of the Federal Court in Criminal Appeal No. I of 1947 (J.K.Gas Plant Manufacturing Co. (Rampur) Ltd. Vs. the King Emperor) a copy of which has since been received. In view of the Federal Court's judgment there would be no objection to using the expression "the Government of Bombay" in the preamble to the notification like the one as proposed at page 3 ante. In view of R.L.A's opinion No. 5837, dated the 6th June 1947, it is, however, a matter for the Department's consideration whether the Tribunal should consist of two members or whether there should be two single member tribunals for the more speedy despatch of business.

Sd/- P.H.Lad.

Remembrancer of Legal Affairs.

U.R. to P. & S.D.. No. 5969 dated the 7th June 194[illegible]

Z.V.G./10-5

Office of the R.L.A.

The draft rules at pages 3-15 ante, as amended, are in order subject to the following remarks.

2. Preamble:- A new preamble has been substituted as the rules will be finally published.

3. Short title:-As the proposed rules relate only to Tribunals to be constituted under the Industrial Disputes Act, 1947, the short title has been suitably amended.

4. Rule 2. :- The definition of "Form" is unnecessary and has been omitted. A new sub-rule (2) has been added saving words and expressions defined in the Act.

5. Rule 4(b)(i):- It is necessary to specify what officer of the trade union shall sign the application. The rule has therefore been amended on the lines of rule 4(b) of the Industrial Disputes (Central) Rules, 1947. The Political and Services Department may consider whether the amendment is suitable.

6. Rule 6 :- This rule prescribes who shall be the representatives of the workmen for the purposes of proceeding before a Tribunal. Draft rule 20 provides that the representatives of the parties, appearing before a Tribunal, shall have the right of examination, cross-examination and re-examination of witnesses called by the Tribunal and of addressing the Tribunal on the completion of the taking of evidence. Under section 36 of the Industrial Disputes Act, 1947, a workman who is a party to an industrial dispute is entitled to be represented in any proceedings under the Act by an officer of a registered Trade Union. It is therefore an officer of a registered Trade Union who can exercise the powers conferred by draft rule 20 and not the representatives prescribed by rule 6. Rule 20 read with rule 6 would therefore go beyond the scope of the Act. This rule has therefore been omitted and consequential amendments have been carried out in the rules wherever necessary.

7. P.&S.D.Rule 16:- Sub-section (2) of section 11 of the Act gives power to a member of a Tribunal to enter the

premises occupied by an establishment to which any existing or apprehended industrial dispute relates. That section does not give any such power to the person authorized by the Tribunal to enter the premises occupied by an establishment to which a dispute relates. It is therefore ultra vires in so far as it empowers the person authorized by the Tribunal to enter into any building etc. This rule has therefore been suitably amended by deleting reference therein to persons authorized by the Tribunal.

8. P. & S.D. Rule 17(3) :- Sub-rule (3) of draft rule 17 provides that every Tribunal shall be deemed to be a Civil Court within the meaning of sections 480 and 482 of the Code of Criminal Procedure, 1898. This sub-rule is on the lines of rule 21 of the Government of India Rules, but it is doubtful whether this rule can be validly made. Sub-section (3) of section 11 of the Act, empowers a Tribunal to exercise the same powers as are vested in a civil Court under the Code of Civil Procedure when trying a suit in respect of certain matters. The power which a Civil Court exercises under section 480 and 482 of the Code of Criminal Procedure are conferred by that Code and not by the Code of Civil Procedure and therefore it would not be in order to say that a Tribunal shall be a Court within the meaning of sections 480 and 482 of the Code of Criminal Procedure. This sub-rule has therefore been omitted.

Sd/- D.V.Vyas.
Remembrancer of Legal Affairs.

U.O. to P. & S.D., No. 7449, dated the 19th July, 1947.

K&V.G.
10-5
4 C.

Office of the R.L.A.

The R.L.A. is requested to advise whether there is any objection to the acceptance of the suggestions at items 2,3 5,6, 9(a) to (c) and 10 of the P. and S.D. office note at pages 98-100 ante.

2. Item 2 of the P. and S.D. office note:- There is no objection to accepting the amendment suggested. However for the words "President, Secretary or other officer of the union" the words "President or Secretary or by such other officer of the union as may be authorized in this behalf by the union" may be substituted.

3. Item 3 :- It is proposed to revise draft r le4(b)(ii) at p. 87 ante as at 'A' on p.98 ante. The revised draft empowers the Labour Officer to convene the meeting of the workmen but such a provision is likely to be considered as falling outside the scope of the Act. Under sub-section(2) of section 10 of the Act Government is required to make the reference if satisfied that the persons applying represent the majority of each party. Clause (b) of rule 4 of the Industrial Disputes (Central) Rules, 1947 therefore prescribed required that the meeting should be of a majority of the workmen. The rule may be revised as under :-

"4(b)(ii): In other cases by such representatives of the workmen directly affected not exceeding five, as may be duly authorised in this behalf at a meeting of a majority of the workmen held for the purpose."

4. Item 8 :- There is no objection to inserting this as rule 7 A. The draft rule at C on p. 99 ante has been slightly amended. The form referred to in draft rule 5 may be called Form I and the forms referred to in draft rule 7 as Forms II and III. In view of the additional forms now proposed to be added to the rules, it will be necessary to have the definition of "form". The expression has therefore been defined in rule 2 and subsequent clauses have been relettered. Consequential changes have also been made in the rules.

5. Item 6 :- This may be accepted.

6. Item 9(a). This may be accepted.

(b) The proposal to insert a new rule as at D onp. 100 is not feasible. Section 36 of the Act specifies the persons by whibh a party to an industrial dispute is entitled to be represented in any preceedings before a tribunal. A rule empowering a party to an industrial dispute to appear before the tribunal through " any other person" would not be in order.

(c) There is no objection to deleting draft rule 22. In that case the subsequent rules will have to be renumbered.

7. Item 10 :- Forms 1 and 2 suggested by the Registrar (pages 73-75): For the words "other side" the words "other party to the dispute" may be sunstituted. Similarly for the words "may be handed over" the words "should be handed over" should be substituted.

Sd/- D.V.Vyas.

Remembrancer of Legal Affairs.

.R. to P. and S.D., No. 8328, dated the 13th August 1947.

LV.G/1045

C.

or transferred to him from Sir H. Divatia under the Bombay Adjudication Proceedings (Transfer and Continuance) Ordinance, 1947.

Sd/-

K.V.G. / 10-5

4 C.

35

Notification.

Political and Services Department,

Bombay Castle, 1947.

Industrial Disputes Act, 1947.

No. :- Whereas by Government Notification, Political and Services Department No.575/46 dated the 11th August 1947 and Industrial Tribunal consisting of one person only, namely, Mr. Deveshankar Vajeshankar Vyas, I. C. S., has been constituted for the adjudication of industrial disputes in relation to which the Central Government is not the appropriate Government, in accordance with the provisions of the Industrial Disputes Act, 1947;

And Whereas the services of the said Mr. Deveshankar Vajeshankar Vyas, I.C.S. have ceased to be available;

Now, therefore, in exercise of the powers conferred by sub-section (2) of section 8 of the said Act, the Government of Bombay is pleased to appoint Mr. Mohanlal Chunilal Shah, B.A., LL. in place of the said Mr. Deveshankar Vajeshankar Vyas, I.C.S.

By order of the Governor of Bombay,

Sd/-

Joint Secretary to Government.

-.V.O./10-8

4C.

~~Office of the Bridge~~

A revised draft Notification is sent herewith.

The view taken by Joint Secretary, Political and Services Department, in his note at page 2 ante is correct. After his appointment in place of Mr. Vyas under the proposed notification Mr. Shah will be the member of the Tribunal already constituted under Government Notification, No. 576/46, dated the 11th August 1947, and as such will be competent to entertain fresh disputes referred to him under section 10 of the Act or transferred to him from Mr. H. Divatia under the Bombay Adjudication Proceedings (Transfer and Continuance) Ordinance, 1947.

Sd/- B.B.Palekar.
For Remembrancer of Legal Affairs.

U.R. to P. & S.D. No. 10053
dated the 18th October 1947.

K.V.O./10-5

Office of the R.L.A.

In the preamble of the specimen form of the proposed draft order at page 3 ante, for the portion beginning with the words "Industrial Tribunal" and ending with the figures "1947" the following may be substituted, namely:-

"Industrial Tribunal consisting of Mr. Mohanlal Chunilal Shah, B.A., LL.B., constituted under Government Notification, Political and Services Department, No.675/46, dated the 11th August 1947 read with Government Notification Political and Services Department, No. 675/46, dated the 21st October 1947".

Sd/- S.B.Palekar.
For Remembrancer of Legal Affairs.

U.R. to P. & S.D. No. 11600
dated the 4th December 1947.

.V.S./10-5
4 C

Office of the R.L.A.

Section 2 of the Bombay Adjudication Proceedings (Transfer and Continuance) Ordinance, 1947, (Bom.IV of 1947) now enacted into the Bombay Act XXXIV of 1947 provided that any trade dispute transferred under that section to a tribunal constituted by the Provincial Government under the Industrial dispute within the meaning of the said Act and all the provisions of the said Act shall apply in relation to such dispute as if it were referred to the tribunal for adjudication under the said Act. By Political and Service Department, Notification No. 587/46, dated the 17th September 1947, the proceedings between the Kalyan Borough Municipality and its menial staff pending before Sir HARSIDHBHAI DIVATIA under rule 81A of the Defence of India Rules have been transferred first to the Industrial Court consisting of Mr. D.V.Vyas alone and then to Mr. M.C.Shah as the services of the former were not available (vide P. & S.D.Notfn. No.575/46, dated 21-10-1947) Section 8(2) of the Industrial Disputes Act, 1947, provides that that where a tribunal consists of one person only and his services cease to be available the appropriate Government shall appoint another independent person in his place, and the proceedings shall be continued before the person so appointed. The Act does not contemplate that a proceeding before one tribunal should be transferred to another tribunal where the services of members constituting the tribunal are available; and there is no provision in the Act for effecting such transfers.

The proposal of the Registrar, Industrial Court, Bombay to modify or supersede Government Order No. 587/46, dated the 17th September 1947 in the manner suggested by him is not in order.

Sd/- D.V.Vyas.

Secretary to Govt. of Legal Affairs.

K.V.G:/10-5

Dy.S. D.NO. 13170, dated the 1st December 1947.

U.R. to